

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Takuya FUKUDA
Title: STRUCTURE AND METHOD FOR MOUNTING
DRIVE MOTOR
Appl. No.: 10/566,996
International Filing Date: 4/19/2004
371(c) Date: 02/02/2006
Patent No.: 7,588,117
Grant Date: 09/15/2009
Examiner: John D. Walters
Art Unit: 3618
Confirmation Number: 9854

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 09/15/2009 as U.S. Patent No. 7,588,117.

The Patent Office determined that the patent was entitled to 618 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C.

§ 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicant has recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 843 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

There were no circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	843 days
(b) Total Applicant delay:	0 days
Final PTA Determination:	843 days

Applicants therefore respectfully request that the patent be accorded 843 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Applicant requests further that a decision on this request be deferred or delayed until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Respectfully submitted,

Date November 9, 2009

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By  _____

Glenn Law
Attorney for Applicant
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Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 040302-0541
 Application Number: 10/566996
 Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	02/02/2006	0		
	14 month From Application date	04/02/2007	424		
Edit Delete	Restriction Requirement	12/10/2008	1,042	618	
Edit Delete	Restriction Requirement Response Received at PTO	01/09/2009	1,072		
Edit Delete	Non-Final Office Action	01/23/2009	1,086		
	3 Year Period Starts	02/02/2009	1,096		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	04/23/2009	1,176		
Edit Delete	Notice of Allowance	05/11/2009	1,194		
Edit Delete	Issue Fee Paid	08/06/2009	1,281		
Edit Delete	Patent Grant Date	09/15/2009	1,321	225	
			Totals:	843	0
			PTA:	843	

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Foley & Lardner LLP